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 RICHARD W. WIEKING
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 NORTHERN DISTRICT OF CALIFORNIA

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UNITED STATES DISTRICT COURT
 NORTHERN DISTRICT OF CALIFORNIA
 SAN FRANCISCO DIVISION

WHA

CATHERINE SCHOOP,

Plaintiff,

v.

COMMISSIONER OF INTERNAL REVENUE and
 UNITED STATES OF AMERICA,

Defendants.

CV 13 80 067 MISC

MISCELLANEOUS CIVIL
 ACTION - MOTION TO QUASH
 SUMMONS

MOTION TO QUASH

Pursuant to 26 U.S.C. § 7609(b) Plaintiff (hereinafter "Petitioner") hereby brings this Motion to Quash against summons issued by the Internal Revenue Service (IRS).

FACTS

In March 2011, Petitioner Catherine Schoop was contacted by the IRS Criminal Investigation Division ("CID") concerning the corporate deposit activities of New York Frankfurter Company of California, Inc. (hereinafter "NY Frankfurter") with Bank of America. CID informed Petitioner that they believed the corporate bank deposits were being structured and this alleged activity was illegal under 31 U.S.C. § 5311. CID also stated that Petitioner's

1 alleged structured deposits were not serious so long as she was unaware of the illegality of her
2 actions under 31 U.S.C. § 5311 and would be sending a letter of acknowledgment. However,
3 when Petitioner received the letter of acknowledgment from CID, the letter also requested that
4 she sign a Form 8821 so CID could also examine her and NY Frankfurter's 2009 and 2010
5 income tax returns. In April 2011, Petitioner signed the CID letter along with IRS Form 8821
6 authorizing the review of individual and corporate tax information.
7

8 On August 27, 2012, the IRS audited NY Frankfurter for the fiscal year July 1, 2009 to
9 June 30, 2010 and Petitioner's related individual income tax returns for taxable years 2009 and
10 2010 as a shareholder. On March 19, 2013, the IRS issued a summons requesting that
11 Petitioner appear on April 9, 2013 before Internal Revenue Agent Ariana Grellas in order to
12 obtain personal testimony related to the August 27, 2012 IRS audit.
13

14 **ARGUMENT**

15 **I. Irrelevance of Information Previously Obtained Through Audit**

16 Utilizing a four part test set forth by the Supreme Court in U.S. v. Powell, 379 U.S. 48,
17 57-58 (1964), the Ninth Circuit has determined in order to enforce a summons the government
18 must establish that (1) the investigation will be conducted for a legitimate purpose (2) the
19 material being sought is relevant to that purpose; (3) the information sought is not already in
20 the IRS' possession; and (4) the IRS complied with all administrative steps required by the
21 Internal Revenue Code. Crystal v. U.S., 172 F.3d 1141, 1143-1145 (9th Cir. 1999). The
22 government must also make some showing of relevancy to prevent a fishing expedition through
23 a taxpayer's records. U.S. v. Darwin Const. Co., Inc., 632 F.Supp. 1426, 1429 (D. Md. 1986).
24

25 Here, all information sought by the IRS through its summons has already been provided
26 by the August 27, 2012 audit and through Petitioner's counsel. *See* Declaration of Cindy L. Ho
27
28

1 at 4 and 5. Since the information sought is already in the IRS' possession, the IRS summons of
2 Petitioner is improper as it fails the fourth prong of the Powell test. Consequentially, since the
3 information sought has already been obtained by the IRS, the testimony of Petitioner can also
4 serve no legitimate purpose and thus has no relevancy to the express purposes in which the IRS
5 may issue a summons. Therefore, the IRS summons of Petitioner is improper as it fails to meet
6 two of the four elements set forth by the Supreme Court in U.S. v. Powell, and should be
7 quashed.
8

9 **II. IRS Summons is Improper Due to Criminal Implications of CID Investigation**

10 Consensual searches are unreasonable under the Fourth Amendment and violative of
11 due process under the Fifth Amendment if a taxpayer's consent was induced by fraud, deceit,
12 trickery or misrepresentation by the revenue agent. U.S. v. Peters, 153 F.3d 445, 451 (7th Cir.
13 1998). "If the [revenue] agents were in fact conducting a criminal investigation under the
14 auspices of a civil audit, then they affirmatively misrepresented the nature of their
15 investigation." Id. at 451. Civil audits generally evolve into a criminal investigation when the
16 auditors develop a strong indication of fraud. Id. Furthermore, "active involvement of CID
17 personnel in a civil audit prior to the completion of a criminal referral also has been treated as
18 compelling evidence that the IRS has proceeded beyond the point of "the firm indications of
19 fraud' and attempted to use the audit as a covert criminal investigation". Id.
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22 The Revenue Agent Ariana Grellas conducting the initial August 27, 2012 audit assured
23 Petitioner's counsel that the audit was independent of the CID investigation of Petitioner's
24 income tax returns. *See* Declaration of Cindy L. Ho at 3. However, the fact that CID
25 previously contacted Petitioner by telephone and correspondence are clear indications that
26 there are criminal implications for Petitioner in the IRS' investigation.
27
28

Petitioner's counsel has provided the IRS with all available answers and documentation pursuant to the April 27, 2012 audit. The Revenue Agent Ariana Grellas has acknowledged to Petitioner's counsel the sufficiency of these answers but insists on hearing the same testimony from Petitioner in-person. *See* Declaration of Cindy L. Ho at 6. Given the circumstances, the IRS' summons alone is indicative of a criminal fishing expedition. Petitioner will provide the exact same responses and information as were previously provided by Petitioner's counsel. The IRS summons of Petitioner's testimony can therefore serve no purpose other than building a criminal case against the Petitioner.

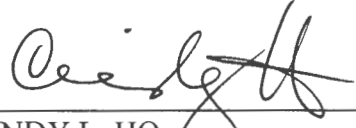
Due to the criminal implications of the IRS' investigation, the testimony obtained through the IRS' summons of Petitioner would constitute an unreasonable search under the Fourth Amendment and be violative of due process under the Fifth Amendment.

CONCLUSION

Since the IRS summons fails two of the four part test set forth in U.S. v. Powell and Petitioner's consensual compliance with the IRS summons would be violative of her constitutional rights, the IRS' summons is improper and should be quashed.

Respectfully Submitted,

Dated: April 5, 2013


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Representative for Plaintiff

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8 Attorneys for Plaintiff

9 UNITED STATES DISTRICT COURT
10 NORTHERN DISTRICT OF CALIFORNIA
11 SAN FRANCISCO DIVISION

12 CATHERINE SCHOOP,

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Plaintiff,

v.

COMMISSIONER OF INTERNAL
REVENUE and UNITED STATES OF
AMERICA,

Defendants.

DECLARATION OF CINDY L. HO

IN SUPPORT OF MISCELLANEOUS CIVIL
ACTION - MOTION TO QUASH
SUMMONS

I, Cindy L. Ho, declare that if called to testify I could and would testify as follows:

1. I am the attorney of record for Petitioner Catherine Schoop.

2. On March 26, 2013, I had a telephone conference with Internal Revenue Agent
Ariana Grellas and the manager Nick Connors.

3. During the March 26, 2012 conversation, Nick Connors and Ariana Grellas stated that
the Internal Revenue Service's (IRS) investigation was independent of Criminal Investigation

DECLARATION OF CINDY L. HO

1 Department's investigation and not related.

2 4. Pursuant to IRS information document requests and several meetings with Ariana
3 Grellas, I have provided the IRS with all available documentation in my possession.

4 5. Pursuant to IRS information document requests and several meetings with Ariana
5 Grellas, I provided the IRS with all answers available and known to the Petitioner Catherine
6 Schoop.

7 6. The Revenue Agent Ariana Grellas acknowledged that the IRS was satisfied that I
8 had provided all answers in good faith but wanted Petitioner Catherine Schoop to provide the
9 same testimony personally.

10 I declare under the penalty of perjury that the foregoing is true and correct.

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12 Executed on April 5, 2013 in San Francisco, California.

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16 CINDY L. HO
17 Attorney for Plaintiff Catherine Schoop
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